

AMENDED IN SENATE JULY 15, 2010

AMENDED IN SENATE JUNE 17, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 619

Introduced by Assembly Member Blumenfield

February 25, 2009

An act to add Article 14 (commencing with Section 10482) to Chapter 2 of Part 2 of Division 2 of the Public Contract Code, and to add Section 185034.5 to the Public Utilities Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

AB 619, as amended, Blumenfield. Transportation projects: high-speed rail.

Existing law, the California High-Speed Rail Act, creates the High-Speed Rail Authority to develop and implement a high-speed train system in the state, with specified powers and duties. Existing law gives the authority the power to, among other things, enter into contracts with private or public entities for the design, construction, and operation of high-speed trains. Existing law, the Safe, Reliable, High-Speed Passenger Train Bond Act for the 21st Century, approved by the voters as Proposition 1A at the November 4, 2008, general election, provides for the issuance of \$9.95 billion in general obligation bonds for high-speed rail and related purposes.

This bill would establish procedures to be followed by entities that intend to bid or submit a proposal to contract with the authority for goods or services related to the high-speed train network, as specified. Among other provisions, the bill would require any entity applying for a contract with the authority to affirmatively certify whether it had any

direct involvement in the deportation of any individuals to extermination camps, work camps, concentration camps, prisoner of war camps, or any similar camps between specified dates during World War II. The bill would also ~~authorize the authority to disqualify an entity from bidding on a contract based on its disclosures and would authorize civil penalties to be imposed on an entity that submits a false certification under those provisions, as provided~~ *require the authority to acknowledge and note the importance of complying with this certification, as provided.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares the following:
2 (a) In November 2008, California voters approved Proposition
3 1A, the Safe, Reliable, High-Speed Passenger Train Bond Act for
4 the 21st Century. Proposition 1A provided \$9 billion for high-speed
5 rail development. In January 2010, California was awarded \$2.25
6 billion by the federal government to construct the statewide
7 high-speed rail system.
8 (b) High-speed rail will reduce travel time between population
9 centers; remove millions of tons of carbon and other greenhouse
10 gasses from the atmosphere; provide jobs in engineering,
11 construction, operations, and maintenance; and allow California
12 to maintain its leadership as a national model for policy and social
13 responsibility.
14 (c) California's high-speed rail network will be funded with
15 public moneys provided by federal and state taxpayers, and with
16 bond sales, and private partnerships. Design, engineering,
17 operation, and maintenance of the rail lines will be provided by
18 any number of entities following competitive bidding processes.
19 ~~(d) The citizens of California and the State of California as a~~
20 ~~whole have a legitimate and substantial interest in assessing the~~
21 ~~character of the entities to be entrusted with the implementation~~
22 ~~of the state's high-speed rail network and further in ensuring that~~
23 ~~public moneys allocated to entities for such projects be awarded~~
24 ~~in a fashion that promotes corporate responsibility and governance.~~
25 (e) ~~To that end, the~~

1 (d) The California High-Speed Rail Authority and the citizens
2 of California should have the benefit of appropriate and complete
3 disclosure by all entities competing for high-speed rail grants. Such
4 disclosure and related due diligence is essential to California's
5 regulation and oversight of the contracting process and expenditure
6 of state funds.

7 ~~(f)~~

8 (e) It has come to the Legislature's attention that certain entities
9 that have expressed interest in competing for high-speed rail grants
10 in California have engaged in conduct which the Legislature
11 believes requires public disclosures. For instance, between 1942
12 and 1944, many thousands of persons, including current residents
13 of California, were deported to concentration camps on trains.
14 ~~operated for profit by certain companies. United States airmen~~
15 ~~who were shot down over France, as well as other United States~~
16 ~~citizens, were among the persons deported on these trains to those~~
17 ~~concentration camps, including Auschwitz and Buchenwald, where~~
18 ~~they were systematically murdered.~~

19 ~~(g) Given this record, it is important, in connection with the~~
20 ~~bidding and review process for California high-speed rail grants,~~
21 ~~that adequate certification of a contractor's fitness be required, as~~
22 ~~described in Section 10485 of the Public Contract Code, as added~~
23 ~~by this act, as those findings are potentially relevant to the state's~~
24 ~~legitimate concern with the present character of applicants, as well~~
25 ~~as to the quality of their corporate governance, corporate~~
26 ~~accountability, corporate responsibility, and trustworthiness.~~

27 ~~(h) This bill is not intended to remedy historical wrongs. It is~~
28 ~~intended to ensure that public moneys provided by the taxpayers~~
29 ~~and bondholders of the State of California are used in a manner~~
30 ~~consistent with our shared values of respect for human rights. The~~
31 ~~certification and disclosure provisions of this bill are intended to~~
32 ~~provide to the California High-Speed Rail Authority the~~
33 ~~representations necessary to assess properly and fully the~~
34 ~~qualifications of companies competing for high-speed rail grants.~~

35 (i) This bill is not intended to be limited to the conduct described
36 in subdivision (f). Accordingly, should the Legislature become
37 aware of any potential contractor competing for public funds that
38 has engaged in conduct of similarly problematic moral or ethical
39 character, and should there be a similar nexus between this conduct
40 and the present quality of the applicant's character, corporate

1 ~~governance, responsibility, and accountability, full disclosure of~~
2 ~~the conduct is essential to the contracting and bidding process and~~
3 ~~it is the opinion of the Legislature that similar legislation should~~
4 ~~be adopted in similar circumstances.~~

5 ~~(j) This bill is intended solely to further these ends, and it is not~~
6 ~~a punitive measure.~~

7 SEC. 2. Article 14 (commencing with Section 10482) is added
8 to Chapter 2 of Part 2 of Division 2 of the Public Contract Code,
9 to read:

10
11 Article 14. California High-Speed Rail Act Procedures
12

13 10482. This article establishes proper procedures for entities
14 that intend to bid or submit a proposal to contract with the
15 California High-Speed Rail Authority for goods or services related
16 to the high-speed train network, as contemplated by the California
17 High Speed Rail Act (Division 19.5 (commencing with Section
18 185000) of the Public Utilities Code).

19 10483. (a) Notwithstanding any other law, any entity applying
20 for a contract with the authority related to the high-speed train
21 network, including, but not limited to, the engineering,
22 construction, manufacture, or operation of a high-speed rail
23 network or any components thereof, shall affirmatively certify in
24 advance of submitting a formal bid the following:

25 (1) Whether it had any direct involvement in the deportation of
26 any individuals to extermination camps, work camps, concentration
27 camps, prisoner of war camps, or any similar camps during the
28 period from January 1, 1942, through December 31, 1944.

29 (2) If an entity responds that it has had a direct involvement in
30 the deportation of any individuals, as described in paragraph (1),
31 the entity shall certify all of the following:

32 (A) Whether the entity has any records (whenever created) in
33 its possession, custody, or control related to those deportations.

34 (B) Whether the entity has taken any remedial action concerning
35 those deportations, and whether the entity has provided restitution
36 to all identifiable victims of those deportations.

37 (3) An entity that certifies to its direct involvement under this
38 subdivision may, at its own discretion, provide any mitigating
39 circumstances in narrative and documentary form. ~~If, at its own~~
40 ~~discretion, an entity, in order to better inform the authority's~~

1 ~~decision concerning these mitigating circumstances, produces~~
2 ~~documentary and narrative explanatory materials, those materials~~
3 ~~provided to the authority shall include one or more of the~~
4 ~~following:~~

5 ~~(A) All records in the possession, custody, or control of that~~
6 ~~entity relating to deportations. This requirement includes, but is~~
7 ~~not limited to, all records related to the origination and destination~~
8 ~~of the deportation trains, the fees collected for the deportations,~~
9 ~~and any internal or external discussions or communications~~
10 ~~regarding those deportations.~~

11 ~~(B) A narrative summary describing all of the records provided~~
12 ~~in response to subparagraph (A). This summary shall include~~
13 ~~sufficient detail to describe the content of each document or record.~~

14 ~~(C) A detailed description of any remedial action taken or~~
15 ~~restitution that an entity has provided to all identifiable victims of~~
16 ~~the deportations.~~

17 ~~(b) All disclosures made pursuant to this section shall be made~~
18 ~~to the authority contemporaneously with, or in advance of, and in~~
19 ~~no event subsequent to, the entity's application for the award of~~
20 ~~high-speed rail grants. All disclosures are a matter of public record.~~

21 ~~10484. (a) Notwithstanding Section 10180, the authority, upon~~
22 ~~determination that an entity's disclosures under Section 10483~~
23 ~~raise significant concerns about that entity's corporate character~~
24 ~~and responsibility, may disqualify the entity from bidding on a~~
25 ~~contract related to the high-speed train network within the State~~
26 ~~of California, including, but not limited to, the engineering,~~
27 ~~construction, manufacture, or operation of a high-speed rail~~
28 ~~network or any components thereof.~~

29 ~~(b) In making its determination to disqualify an entity pursuant~~
30 ~~to subdivision (a), the authority shall consider all disclosures,~~
31 ~~including any mitigating information provided under Section~~
32 ~~10483.~~

33 ~~10485. (a) The second or third lowest bidder, and any person,~~
34 ~~firm, association, trust, partnership, labor organization, corporation,~~
35 ~~or other legal entity which has, prior to the letting of the bids on~~
36 ~~the project in question, entered into a contract with the second or~~
37 ~~third lowest bidder, may bring an action in superior court if that~~
38 ~~entity suffers damages for any contract as a result of the successful~~
39 ~~bidder's false certification pursuant to Section 10483.~~

1 ~~(b) Nothing in this section shall affect the right of the Attorney~~
2 ~~General to bring a civil action against an entity that has made a~~
3 ~~false certification.~~

4 ~~(c) If it is determined that an entity has submitted a false~~
5 ~~certification under Section 10483 an or all of the following may~~
6 ~~apply:~~

7 ~~(1) The court may impose a civil penalty upon the entity in an~~
8 ~~amount that is equal to the greater of two hundred fifty thousand~~
9 ~~dollars (\$250,000) or twice the amount of the contract for which~~
10 ~~a bid or proposal was submitted.~~

11 ~~(2) The authority may terminate the contract with the entity.~~

12 ~~(3) The entity shall be ineligible to, and shall not, bid on a state~~
13 ~~contract for a period of not less than three years from the date the~~
14 ~~authority determines that the entity submitted the false certification.~~

15 ~~(d) In an action brought pursuant to this section, the court may~~
16 ~~award costs and reasonable attorney’s fees, in an amount to be~~
17 ~~determined in the court’s discretion, to the prevailing party.~~

18 ~~10484. The authority shall acknowledge the information~~
19 ~~provided as required by Section 10483 when awarding contracts.~~
20 ~~The authority in its procurement solicitation documents shall note~~
21 ~~the importance of complying with Section 10483.~~

22 ~~10486.~~

23 ~~10485. For the purposes of this article, the following definitions~~
24 ~~apply:~~

25 ~~(a) “Authority” means the California High-Speed Rail Authority.~~

26 ~~(b) “Direct involvement” means ownership or operation of the~~
27 ~~trains on which persons were deported to extermination camps,~~
28 ~~work camps, concentration camps, prisoner of war camps, or any~~
29 ~~similar camps during the period from January 1, 1942, through~~
30 ~~December 31, 1944.~~

31 ~~(c) “Entity” means any corporation, affiliate, or other entity that~~
32 ~~controls, is controlled by, or is under common control with, or that~~
33 ~~is a member of a partnership or a consortium with, an entity~~
34 ~~affected by this article. An entity shall be presumed to be in control~~
35 ~~of another corporation or entity if it owns or directly or indirectly~~
36 ~~controls more than 50 percent of the voting securities or more than~~
37 ~~50 percent of any other ownership interest of the other corporation~~
38 ~~or entity. This definition of “entity” shall apply irrespective of~~
39 ~~whether or not the equity interest in the entity was owned by a~~
40 ~~foreign state.~~

1 (d) ~~“Second lowest bidder” means the second lowest qualified~~
2 ~~bidder deemed responsive by the authority, which includes any~~
3 ~~person, firm, association, corporation, or legal entity.~~

4 (e) ~~“Third lowest bidder” means the third lowest qualified bidder~~
5 ~~deemed responsive by the authority, which includes any person,~~
6 ~~firm, association, corporation, or legal entity.~~

7 ~~10487. The provisions of this article are severable. If any~~
8 ~~provision of this article or its application is held invalid, that~~
9 ~~invalidity shall not affect other provisions or applications that can~~
10 ~~be given effect without the invalid provision or application.~~

11 SEC. 3. Section 185034.5 is added to the Public Utilities Code,
12 to read:

13 185034.5. Any bids or proposals submitted to the authority for
14 a goods or services contract related to the high-speed train network
15 shall conform to the procedures set forth in Article 14 (commencing
16 with Section 10482) of Chapter 2 of Part 2 of Division 2 of the
17 Public Contracts Code.